

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

NATIONAL ELECTRICAL  
BENEFIT FUND,

Plaintiff,

Civil Action 2:10-mc-00018

v.

ACJ ELECTRIC, INC.,

Defendant.

ORDER

This matter is before the court for consideration of the September 28, 2011, report and recommendation (Doc. 29) of United States Magistrate Judge Elizabeth A. Preston Deavers, to whom this case was referred pursuant to 28 U.S.C. § 636(b). The magistrate judge recommended that the court enter judgment in favor of plaintiff in the amount of \$60,266.61 plus reasonable attorneys' fees and that plaintiff's motion for contempt (Doc. 5) be granted.

The report and recommendation specifically states that the failure to object to the report and recommendation within fourteen days of the report results in a "waiver of the right to de novo review . . . by the District Judge and waiver of the right to appeal the judgment of the District Court." Report and Recommendation, p. 9. The time period for filing objections to the report and recommendation has expired, and no objections have been filed to the report and recommendation.

The court has reviewed the report and recommendation. In its motion requesting that the court hold defendant in contempt, plaintiff also requested that the court hold defendant's president, Glenn H. Kesselring, and defendant's vice president, William J.

Smith, in contempt, citing Electrical Workers Pension Trust Fund of Local Union #58 v. Gary's Electrical Serv. Co., 340 F.3d 373 (6th Cir. 2003). The record demonstrates that Mr. Kesselring received notice of the proceedings in this case, that he attended the contempt hearing presided over by the magistrate judge on March 22, 2011, and that he received the report and recommendation. However, the record is silent as to whether Mr. Smith ever received notice of any of the proceedings or orders in this case, or whether he received the report and recommendation.

The court adopts the report and recommendation except insofar as it recommends the imposition of contempt sanctions on Mr. Smith. Plaintiff's motion for contempt (Doc. 5) is granted in part and denied in part.

The court directs the clerk to enter judgment in favor of plaintiff National Electrical Benefit Fund and against defendant ACJ Electric, Inc., in the amount of \$60,266.61, plus reasonable attorneys' fees in an amount to be later determined by the court. Plaintiff shall file a supplemental memorandum in support of its motion for attorneys' fees (Doc. 15) within fourteen days of the date of this order. If defendant opposes plaintiff's supplemental memorandum, it must file its memorandum in opposition within fourteen days of the date plaintiff files the supplemental memorandum.

The court further finds that defendant and Glenn H. Kesselring are in civil contempt due to their failure to comply with the orders of this court and of the United States District Court for the District of Maryland. The court imposes a fine in the amount of \$60,266.61, payable to plaintiff, as a sanction for their contempt. The fine obligation is joint and several. Defendant and

Mr. Kesselring can purge themselves of contempt by submitting payment to plaintiff in the amount of \$60,266.61 in satisfaction of the judgment and reimbursing plaintiff for the reasonable attorneys' fees in an amount to be determined by this court.

IT IS SO ORDERED.

Date: October 19, 2011

s/James L. Graham  
James L. Graham  
United States District Judge